

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 468

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO INSURANCE; INCREASING GENERAL ADMINISTRATIVE
PENALTIES; ELIMINATING THE DISTINCTION BETWEEN VIOLATIONS OF
STATUTES AND RULES; ADOPTING GENERAL AUTHORITY TO ISSUE
ADMINISTRATIVE COMPLIANCE ORDERS; INCREASING ADMINISTRATIVE
FINES FOR INSURANCE AGENTS; AMENDING AND REPEALING SECTIONS OF
THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-1-18 NMSA 1978 (being Laws 1984,
Chapter 127, Section 18, as amended) is amended to read:

"59A-1-18. GENERAL PENALTY.--

A. Unless the same is defined as a felony under any
other law of this state or punishment therefor classifies it
otherwise, every violation of the Insurance Code is a petty
misdemeanor punishable by a fine not to exceed five hundred

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1 dollars (\$500).

2 B. Where other monetary penalty is not expressly
3 provided for, an administrative penalty may be assessed for
4 violations of the Insurance Code. The administrative penalty
5 shall be not over [~~five thousand dollars (\$5,000)~~] ten thousand
6 dollars (\$10,000) for each violation, except that if the
7 violation is to be found willful and intentional, the penalty
8 may be up to [~~ten thousand dollars (\$10,000)~~] twenty-five
9 thousand dollars (\$25,000) for each violation. Every
10 administrative penalty shall be imposed by written order of the
11 superintendent made after hearing held as provided in Chapter
12 59A, Article 4 NMSA 1978.

13 C. A monetary penalty imposed may be [~~additional~~]
14 in addition to any applicable suspension, revocation or denial
15 of a license or certificate of authority.

16 D. In addition to the authority of the insurance
17 department to bring an action to recover [~~statutory fines~~]
18 administrative penalties and assessments, the insurance
19 department may bring civil actions for penalties in sums not to
20 exceed the [~~criminal fine~~] administrative penalties for each
21 violation of the Insurance Code. [~~in lieu of criminal~~
22 ~~prosecution.~~

23 ~~E. The penalties contained in Subsections A through~~
24 ~~D of this section shall be in addition to any other penalty~~
25 ~~provided by law.]"~~

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1 Section 2. Section 59A-2-9 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 27, as amended) is amended to read:

3 "59A-2-9. RULES AND REGULATIONS--PROMULGATION--
4 VIOLATION.--

5 A. The superintendent, after a hearing thereon, may
6 make reasonable rules and regulations necessary for or as an
7 aid to administration or effectuation of any provision of the
8 Insurance Code administered by the superintendent, and from
9 time to time withdraw, modify or amend any such rule or
10 regulation.

11 B. No such rule or regulation shall extend, modify
12 or conflict with any such provision or other laws of New
13 Mexico.

14 C. The superintendent shall file all new rules,
15 amendments of rules or repeals of rules in accordance with the
16 State Rules Act not later than the submittal deadline for
17 publication in the New Mexico register on or before the
18 effective date of any such rule, amendment or repeal.

19 D. Willful violation of any such rule or regulation
20 shall subject the violator to such penalty as may be applicable
21 under the Insurance Code for violation of the provision to
22 which the rule or regulation relates [~~but no penalty shall~~
23 ~~apply to any act done or omitted in good faith in conformity~~
24 ~~with any such rule or regulation, notwithstanding that the rule~~
25 ~~or regulation may, after such act or omission, be amended or~~

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1 ~~rescinded or determined by judicial or other authority to be~~
2 ~~invalid for any reason]."~~

3 Section 3. Section 59A-2-11 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 29) is amended to read:

5 "59A-2-11. ENFORCEMENT.--

6 ~~[A. The superintendent may invoke the aid of any~~
7 ~~court of competent jurisdiction through injunction, mandamus or~~
8 ~~other appropriate process to enjoin any existing or threatened~~
9 ~~violation of any provision of the Insurance Code, or to enforce~~
10 ~~any order made or action taken by him in pursuance of law.~~

11 ~~B.]~~ A. If the superintendent has reason to believe
12 that ~~[any]~~ a person has violated ~~[any]~~ a provision of the
13 Insurance Code or other law applicable to insurance operations,
14 for which criminal prosecution in ~~[his]~~ the superintendent's
15 opinion would be in order, ~~[he]~~ the superintendent shall give
16 the information relative thereto to the attorney general or
17 other appropriate public law enforcement officials. The
18 attorney general or ~~[such]~~ other law enforcement official shall
19 promptly institute or cause to be instituted ~~[such]~~ an action
20 or proceedings against ~~[such]~~ the person as in ~~[his]~~ the
21 attorney general's or other law enforcement official's opinion
22 the information may require or justify.

23 ~~[C. The superintendent may enforce civil penalties~~
24 ~~provided under the Insurance Code, and for the purpose use~~
25 ~~services of attorneys of the insurance department.]~~

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1 B. If the superintendent has reason to believe that
2 any person has violated or is violating, or on the basis of
3 objective and credible evidence or documentation the
4 superintendent has reason to believe that any person is
5 threatening to violate, any requirement of the Insurance Code,
6 any regulation promulgated pursuant to the Insurance Code, any
7 order of the superintendent or any condition of a license,
8 certificate of authority or registration issued pursuant to the
9 Insurance Code, the superintendent may:

10 (1) issue an administrative order stating with
11 reasonable specificity the nature of the violation or the
12 objective and credible evidence supporting the threatened
13 violation and requiring compliance immediately or within a
14 specified time period or assessing a civil penalty, in an
15 amount provided by the Insurance Code, for any past or current
16 violation, or both;

17 (2) issue a cease and desist order; or

18 (3) commence a civil action in district court
19 for appropriate relief, including a temporary or permanent
20 injunction.

21 C. Any administrative order issued pursuant to this
22 section may include a suspension or revocation of any license,
23 certificate of authority or registration issued by the
24 superintendent. In assessing such penalty, the superintendent
25 shall take into account the seriousness of the violation, any

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1 good-faith efforts to comply with the applicable requirements
2 and other relevant factors.

3 D. If a violator fails to take corrective action
4 within the time specified in a compliance order, the
5 superintendent may:

6 (1) assess an administrative penalty in an
7 amount provided by the Insurance Code for continued
8 noncompliance with the order; and

9 (2) suspend or revoke a license or certificate
10 of authority or registration issued to the violator pursuant to
11 the Insurance Code.

12 E. Any administrative order issued pursuant to this
13 section shall become final unless, no later than thirty days
14 after the order is served, the person or persons named therein
15 submit a written request by certified mail to the
16 superintendent for a public hearing. Upon such request, the
17 superintendent shall conduct a public hearing within ninety
18 days; however, any party may request a stay of the hearing for
19 good cause. The superintendent may appoint an independent
20 hearing officer to preside over the public hearing. That
21 hearing officer shall make and preserve a complete record of
22 the proceedings and forward the hearing officer's
23 recommendation based thereon to the superintendent, who shall
24 make the final decision.

25 F. Any cease and desist order issued pursuant to

1 this section shall provide notice of a hearing before the
2 superintendent to be held not less than twenty days after
3 service of the notice and requiring the person to show cause
4 why the superintendent should not order the person to cease and
5 desist from the violation. The superintendent may appoint an
6 independent hearing officer to preside over the public hearing.
7 That hearing officer shall make and preserve a complete record
8 of the proceedings and forward a recommendation based thereon
9 to the superintendent, who shall make the final decision.

10 G. In connection with any administrative proceeding
11 under this section, the superintendent may issue subpoenas for
12 the attendance and testimony of witnesses and the production of
13 directly related papers, books and documents. Any information,
14 documents or materials produced under this subsection shall be
15 subject to the rules of privilege and confidentiality
16 recognized by law and shall be subject to the requirements of
17 Section 59A-4-2 NMSA 1978. The superintendent shall give
18 thirty days prior notice to the person being investigated that
19 information obtained in the investigation will be made open to
20 public inspection.

21 H. The superintendent shall adopt rules of
22 procedure for conducting such hearings.

23 I. Penalties collected pursuant to an
24 administrative order shall be deposited in the state treasury
25 to be credited to the general fund."

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1 Section 4. Section 59A-5-26 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 93, as amended) is amended to read:

3 "59A-5-26. SUSPENSION, LIMITATION OR REVOCATION OF
4 AUTHORITY--DISCRETIONARY AND SPECIAL GROUNDS.--

5 ~~[A. The superintendent may, at his discretion,~~
6 ~~suspend, limit or revoke an insurer's certificate of authority~~
7 ~~if he finds after a hearing thereon, or upon waiver of hearing~~
8 ~~by the insurer, that the insurer has:~~

9 ~~(1) violated or failed to comply with any~~
10 ~~lawful order of the superintendent;~~

11 ~~(2) willfully violated or willfully failed to~~
12 ~~comply with any lawful regulation of the superintendent;~~

13 ~~(3) violated any provision of the Insurance~~
14 ~~Code other than those for violation of which suspension or~~
15 ~~revocation is mandatory; or~~

16 ~~(4) reinsured all or substantially all of its~~
17 ~~risks, or all or substantially all of its risks in a particular~~
18 ~~kind of insurance, in another insurer.~~

19 ~~B. In lieu of suspension, or revocation of~~
20 ~~certificate of authority as provided in Subsection A of this~~
21 ~~section, the superintendent may, at his discretion, levy upon~~
22 ~~the insurer and the insurer shall forthwith pay to the~~
23 ~~superintendent, an administrative fine of not more than five~~
24 ~~thousand dollars (\$5,000). The superintendent shall promptly~~
25 ~~deposit with the state treasurer to the credit of the general~~

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1 ~~fund all money received under this subsection.~~

2 G.] A. The superintendent shall suspend or revoke
3 an insurer's certificate of authority on [~~any of~~] the following
4 grounds, if found after a hearing thereon that the insurer:

5 (1) is in unsound condition, or its business
6 is being fraudulently conducted, or is in such condition or is
7 using [~~such~~] methods and practices in the conduct of its
8 business as to render its further transaction of insurance in
9 this state currently or prospectively hazardous or injurious to
10 policyholders or the public;

11 (2) with such frequency as to indicate its
12 general business practice in this state:

13 (a) has without just cause failed to
14 pay, or delayed payment of, claims arising under its policies,
15 whether the claim is in favor of an insured or in favor of a
16 third person with respect to the liability of an insured to
17 [~~such~~] the third person; or

18 (b) without just cause compels insureds
19 or claimants to accept less than the amount due them or to
20 employ an attorney or to bring suit against the insurer or such
21 an insured to secure full payment or settlement of a claim;

22 (3) refuses to be examined, or if its
23 directors, officers, employees or representatives refuse to
24 submit to examination relative to its affairs, or to produce
25 books, papers, records, contracts, correspondence or other

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1 documents for examination by the superintendent when required,
2 or refuses or fails to pay expenses of the examination or to
3 perform any other legal obligation relative to the examination;
4 or

5 (4) has failed to pay [~~any~~] a final judgment
6 rendered against it in this state upon any policy, bond,
7 recognizance or undertaking as issued or guaranteed by it,
8 within thirty days after the judgment becomes final.

9 B. The superintendent may suspend or revoke an
10 insurer's certificate of authority if found after a hearing
11 thereon that the insurer reinsured all or substantially all of
12 its risks, or all or substantially all of its risks in a
13 particular kind of insurance, in another insurer.

14 [~~D.~~] C. The superintendent may, at [~~his~~] the
15 superintendent's discretion and without advance notice or
16 hearing thereon, immediately suspend the certificate of
17 authority of an insurer as to which proceedings for
18 receivership, conservation, rehabilitation or other delinquency
19 proceedings have been commenced in [~~any~~] a state by the public
20 insurance supervisory officer of that state."

21 Section 5. Section 59A-5-30 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 97) is amended to read:

23 "59A-5-30. PENALTIES FOR [~~LATE~~] FALSE ANNUAL
24 STATEMENTS.--

25 [~~A. Any insurer failing without just cause~~

1 ~~reasonably beyond control of the insurer, to file its annual~~
 2 ~~statement as required in Section 96 of this article, shall be~~
 3 ~~required to pay a penalty of one hundred dollars (\$100) for~~
 4 ~~each day's delay, but not to exceed five thousand dollars~~
 5 ~~(\$5,000) in aggregate amount, to be recovered in a civil action~~
 6 ~~brought against the insurer in the name of the State of New~~
 7 ~~Mexico by the attorney general. Such penalty may be in~~
 8 ~~addition to any refusal to continue, or suspension or~~
 9 ~~revocation of, the insurer's certificate of authority for such~~
 10 ~~failure.~~

11 ~~B.]~~ Any director, officer, agent or employee of any
 12 insurer who subscribes to, makes or concurs in making or
 13 publishing, any annual or other statement of the insurer
 14 required by law, knowing the same to contain any material
 15 statement [~~which~~] that is false, shall upon conviction thereof
 16 be guilty of a misdemeanor and upon conviction shall be
 17 sentenced to a fine of not more than one thousand dollars
 18 (\$1,000), unless by its extent and nature the offense is
 19 punishable under other statutes as a felony."

20 Section 6. Section 59A-11-17 NMSA 1978 (being Laws 1984,
 21 Chapter 127, Section 196) is amended to read:

22 "59A-11-17. ADMINISTRATIVE FINE.--~~[IN LIEU.--In lieu of~~
 23 ~~suspension, revocation, or refusal to continue a license issued~~
 24 ~~under this article, the superintendent may levy an~~
 25 ~~administrative fine upon the licensee in amount of not less~~

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1 ~~than one hundred dollars (\$100) nor more than five hundred~~
2 ~~dollars (\$500). In the order levying the fine, the~~
3 ~~superintendent shall specify the grounds therefor and the~~
4 ~~period, not to exceed sixty (60) days, within which the~~
5 ~~licensee shall pay. If at the end of payment period so allowed~~
6 ~~the licensee has not paid to the superintendent the amount of~~
7 ~~the fine, the license shall stand suspended, revoked or renewal~~
8 ~~refused, as the case may be, as at the end of the period and~~
9 ~~without further order.] The superintendent may levy an~~
10 ~~administrative fine upon the licensee in an amount not less~~
11 ~~than five hundred dollars (\$500) but not more than one thousand~~
12 ~~dollars (\$1,000) per violation for violations of any~~
13 ~~requirement of the Insurance Code, any regulation promulgated~~
14 ~~pursuant to the Insurance Code, any order of the superintendent~~
15 ~~or any condition of a license."~~

16 Section 7. Section 59A-17-33 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 328, as amended) is amended to read:

18 "59A-17-33. ENFORCEMENT--PENALTIES.--~~[A.]~~ The
19 superintendent shall enforce compliance with the provisions of
20 the Insurance Rate Regulation Law. ~~[Whenever the~~
21 ~~superintendent believes that there is a violation of the~~
22 ~~Insurance Rate Regulation Law and that such violation is~~
23 ~~continuing, the superintendent shall serve upon the advisory,~~
24 ~~joint underwriting, joint reinsurance pool, residual market~~
25 ~~mechanism or insurer or other person violating, as the case may~~

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1 ~~be, notice of a hearing before the superintendent to be held~~
2 ~~not less than twenty days after service of the notice, and~~
3 ~~requiring the organization or person to show cause why the~~
4 ~~superintendent should not order the organization or person to~~
5 ~~cease and desist from the violation.~~

6 ~~B. The superintendent, through the attorney~~
7 ~~general, may maintain an action to enjoin a continuing~~
8 ~~violation of the Insurance Rate Regulation Law.~~

9 ~~C. After hearing, the superintendent may suspend~~
10 ~~the license of an advisory organization or insurer that fails~~
11 ~~to comply with the superintendent's order within the time~~
12 ~~limited by the order or an extension of time that the~~
13 ~~superintendent may grant. The suspension shall not become~~
14 ~~effective until the time prescribed for an appeal has expired,~~
15 ~~or if an appeal has been taken, until the order has been~~
16 ~~affirmed; otherwise, the superintendent may determine when the~~
17 ~~suspension shall become effective, and the suspension shall~~
18 ~~remain in effect for the period fixed unless the superintendent~~
19 ~~modifies or rescinds the suspension, or until the order on~~
20 ~~which suspension is based is modified, rescinded or reversed.~~

21 ~~D. If the superintendent finds that a person has~~
22 ~~violated any provision of the Insurance Rate Regulation Law,~~
23 ~~the superintendent may impose a penalty of not more than ten~~
24 ~~thousand dollars (\$10,000) for each violation; but if the~~
25 ~~superintendent finds the violation to be willful, the~~

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1 ~~superintendent may impose a penalty of not more than~~
2 ~~twenty-five thousand dollars (\$25,000) for each violation.~~
3 ~~Such penalties may be in addition to any other penalty provided~~
4 ~~by law, and, if not paid voluntarily by the violator, may be~~
5 ~~collected through civil action in the district court of Santa~~
6 ~~Fe county in the name of the state of New Mexico on the~~
7 ~~relation of the insurance board.~~

8 ~~E. For the purposes of this section]~~ An insurer using
9 a rate for which the insurer has failed to file the rate,
10 supplementary rate information or supporting information, if
11 Section 59A-17-9 NMSA 1978 requires the materials to be filed,
12 shall have committed a separate violation for each day the
13 failure continues."

14 Section 8. REPEAL.--Sections 59A-15-10 and 59A-15-13 NMSA
15 1978 (being Laws 1984, Chapter 127, Sections 265 and 268) are
16 repealed.